

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-591

January 6, 1999

PUBLIC UTILITIES COMMISSION
Rulemaking: Continued Implementation
and Operation of Energy Conservation
Programs in a Restructured Electricity
Industry (Chapter 380)

ORDER PROVISIONALLY
ADOPTING RULE AND
STATEMENT OF FACTUAL
AND POLICY BASIS

WELCH, Chairman; NUGENT, DIAMOND Commissioner

I. SUMMARY

In this Order we provisionally adopt rules governing the process for transmission and distribution utilities (T&D utilities) to implement energy conservation programs. The Provisional Rule sets the level of funding for Maine's T&D utilities for the 3-year period 2001-2003. The Provisional Rule provides for conservation for residential, commercial, and industrial T&D utility customers.

II. BACKGROUND

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric generation services and allowing for retail competition beginning on March 1, 2000.¹ At that time, Maine's electricity consumers will be able to choose a generation provider from a competitive market. As part of the restructuring process, the Act requires utilities to divest their generation assets and prohibits their participation in the generation services market.

¹ An Act to Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 codified as 35-A M.R.S.A. §§ 3201-3217.

Unbundling electricity supply from electricity delivery significantly affects the implementation of demand side management (DSM) and energy conservation programs² in Maine. Currently, DSM programs are implemented by fully integrated electric utilities, and are designed to result in the lowest overall electricity costs to electricity consumers. Current Chapter 380 of the Commission's rules directs utilities to engage in DSM activity where reducing or shifting customers' energy use costs less than a utility's production of a similar amount of energy. This requirement became an integral part of utility obligations to engage in least-cost planning and resource acquisition.

The deregulation of generation services necessarily removes any obligation for utilities to engage in least-cost planning with respect to generation resources. However, deregulation does not negate the societal benefits of promoting DSM, especially when such activities cost less than corresponding supplies or create environmental benefits by reducing pollution. Accordingly, the restructuring of the industry should not, in and of itself, result in the elimination or reduction of DSM activities. The Legislature recognized the continued benefit of DSM by including a provision in the Act that ensures a reasonable

² In this Order the terms DSM and energy conservation are used interchangeably. Because the Act requires "energy conservation," we will adopt that term when referring to any activities performed pursuant to the Act.

level of energy conservation activity after the advent of retail competition, and assigning the responsibility for that activity to the regulated transmission and distribution utilities.

III. STATUTORY PROVISIONS

35-A M.R.S.A. § 3211 outlines future requirements governing energy conservation programs. Specifically, this section requires that:

1. transmission and distribution utilities implement energy conservation programs;
2. costs of such programs be included in the rates of the transmission and distribution utilities;
3. transmission and distribution utilities select energy efficiency service providers through periodic competitive bidding programs; and
4. the Commission establish a reasonable level of funding comparable to the amount expended for similar programs in the year 1999.

Current Chapter 380 of the Commission's rules governs the process for initiating DSM programs.³ Maine's electric utilities have carried out DSM activities pursuant to Chapter 380 since the mid-1980s. The rule we provisionally adopt replaces the current Chapter 380 in its entirety. This rule is a "major substantive rule" as defined and governed by 5 M.R.S.A. §§ 8071-8074.

Pursuant to the process set forth in 5 M.R.S.A. § 8072, the Legislature must review the Provisional Rule and authorize its

³ In addition, the Maine Energy Policy Act, 35-A M.R.S.A. § 3191, and the Electric Rate Reform Act, 35-A M.R.S.A. §§ 3151-3154, contain current energy conservation policy, and CMP's Alternative Rate Plan governs its DSM spending and certain implementation requirements.

final adoption either by approving it, with or without change, or by taking no action.

IV. RULEMAKING PROCESS

On June 26, 1998, we issued a Notice of Rulemaking and a proposed rule. Prior to initiating the formal rulemaking, we conducted an Inquiry to obtain comments and proposals from interested persons. The comments obtained in the Inquiry were constructive in the development of the proposed rule.

A hearing on the proposed rule was held on August 25, 1998. The following testified at the hearing: Central Maine Power Company (CMP); Coalition for Sensible Energy (CSE); Industrial Energy Consumers Group (IECG); Maine Community Action Association (MCAA); Natural Resources Council of Maine (NRCM); Northeast Energy Efficiency Partnerships (NEEP); Office of Public Advocate (OPA); and State Planning Office (SPO). In addition, the following filed written comments on the proposed rule: Bangor Hydro-Electric Company (Bangor Hydro); CMP; Coastal Community Action Program (Coastal); Conservation Law Foundation (CLF); Dirigo Electric Cooperative (Dirigo); Impact Technologies Incorporated (ITI); Maine Public Service Company (MPS); MCAA; NEEP; NRCM; OPA; S&S Technologies Incorporated (S&S); SESCO; State Representative Charles LaVerdiere and The Waldo County Committee for Social Action (Waldo). The comments of the parties are incorporated in changes we made to the proposed rule or are otherwise addressed below.

V. GENERAL POLICY and OBJECTIVES

The majority of the comments focused on three aspects of the proposed rule: funding levels, eligibility of industrial customers, and how T&D utilities will procure programs. Because these policies are critical to the functioning of the rule, we generally discuss our decisions related to each of these areas in this Section. In Section VI, we discuss the specific provisions of the Provisional Rule.

A. Funding

1. Overall Level of Funding

35-A M.R.S.A. § 3211 states, "The commission shall establish a reasonable level of funding for those [energy conservation] programs comparable to the amount expended for similar programs in the year 1999 and regularly review the amount of funding needed." As reflected in the comments, this language is open to various interpretations. In the Provisional Rule, we have attempted to implement a scheme that closely reflects the legislative language. Because this is a major substantive rule, we recognize that the Legislature may wish to clarify certain provisions of the Rule if it finds the Rule does properly carry out the statutory intent.

The statutory requirement that conservation programs be funded at levels comparable to the amounts expended in 1999 presents a timing problem. Since utility financial reports are not complete until after the end of a year, the amount of energy conservation program spending for 1999 will not be known until around March, 2000. To establish a funding level in time to meet statutory deadlines, in the proposed rulemaking we sought information from the utilities about their projected spending in 1999. Only CMP had such a projection. The best information available from other utilities were their 1997 actual expenditures. We have used projected 1999 expenditures for CMP and 1997 actual energy conservation spending for all other utilities. Based on this information, the amount of annual spending for energy conservation programs statewide would be \$17.15 million. This is the same methodology used to develop spending recommendations for the proposed rule, but we now include historic spending on industrial customer conservation programs (because of our decision to include these customers, see Section V.B. below). Our recommendation is based on the following information provided by the utilities:

Table 1

Utility	1997 Conservation Spending *	1997 Mwh Sales
Bangor Hydro-Electric	\$738,639	1,745,210
Central Maine Power	\$16,350,000	9,164,525
Maine Public Service	\$46,783	484,408
Consumer-owned Utilities ⁴	\$14,244	550,060

⁴The Consumer-owned Utilities are: Town of Madison Department of Electric Works, Fox Island Electric Cooperative, Eastern Maine Electric Cooperative, Houlton Water Company,

Totals	\$17,149,666	11,944,203
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* Except CMP, 1999 projected.

At the hearing on the proposed rule, several commenters stated that the proposed spending levels were too low, and not consistent with historic conservation spending as required by the Legislature. Others commented that removal of conservation spending on the industrial sector was contrary to the legislative directive. By relying on the conservation spending information gathered following the hearing on the proposed rule, and by including spending on industrial customers, we have improved our projections for 1999 spending. Once again, we believe this methodology most closely adheres to the statutory requirement.

2. Spending Levels by Different Utilities

As indicated in the Table 1 above, there is a large disparity in conservation spending among Maine's utilities. CMP's customers will spend about 1.8 mils (almost two tenths of a cent) per kilowatt hour for energy conservation programs in 1999. By comparison, customers of Maine Public Service Company and customers of the Dirigo Consumer-owned Utilities, have recently spent .09 mils (one hundredth of a cent) and .03 mils (three one thousandths of a cent) per kilowatt hour respectively. The Legislature may not have been aware of this disparity.

Kennebunk Light and Power District, Van Buren Light and Power District, Swans Island Electric Cooperative, and Union River Electric Cooperative.

No commenters opposed the proposed rule's requirement that utilities contribute to conservation spending at levels proportional to their share of total State electricity sales. Total conservation program spending in Maine (\$17.15 million) divided by total State sales (11.9 GWh) equates to approximately 1.44 mils per kilowatt hour of spending. When this amount is redistributed among utilities according to their sales levels, it results in the proposed annual spending levels provided in Table 2 below:

Table 2

Utility	Proposed Conservation Spending
Bangor Hydro-Electric	\$2,505,799
Central Maine Power	\$13,158,563
Maine Public Service	\$695,520
Consumer-owned Utilities	\$789,784
Totals	\$17,149,666

3. Spending Levels Include Amounts Already Committed

The amount of money available to pay for incremental energy conservation program activities is less than the amounts depicted in the Table 2 because Maine utilities have been allowed to pay and account for conservation programs in a manner analogous to that used for generation plants. Historically, portions of large conservation projects have been amortized and paid for over time. In addition, certain third party, performance based, conservation contracts have payment streams tied to the periodic measurement of delivered savings. Information provided by CMP (summarized in Table 3) indicates that its contractual payments extend into the next millennium

and, for at least two years after the effective date of restructuring, exceed the amount of money available under our proposed apportionment.⁵

Table 3

YEAR	2000	2001	2002	2003	2004
CMP Funds Available \$(000)	\$13,159	\$13,159	\$13,159	\$13,159	\$13,159
CMP Commitments \$(000)	\$13,302	\$13,302	\$11,446	\$9,280	\$8,666
Available for New Programs	(\$143)	(\$143)	\$1,713	\$3,879	\$4,493

At the hearing on the proposed rule, we received many comments on this issue. CMP acknowledged the problem and suggested that the Commission could address this concern by setting its funding at the 1999 level of its planned incremental DSM spending, or about \$2.2 million. The Public Advocate, Citizens for Sensible Energy, SESCO, and the Natural Resources Council of Maine all indicated that the spending levels ought to be directed towards the installation of incremental conservation measures and not allocated to paying down prior commitments.

It is unclear whether the Legislature knew, or anticipated that the statutory language would limit conservation spending by Maine's largest utility. Representative Charles LaVerdiere filed comments on the proposed rule on this issue:

⁵ In addition to CMP, Bangor Hydro has remaining contractual payments through 2005. We understand that their commitment for 2000 is approximately \$250,000, and that the annual payments decline thereafter.

The resolution of the funding issue by the committee essentially was to seek a continuation of the existing levels of DSM spending, with neither increases that would burden T&D utility rates nor decreases that would sacrifice energy efficiency improvements in CMP's . . . territory.

In response to these comments, we add language to the Provisional Rule requiring any utility to spend at least the amount in Table 2. If, due to prior commitments the amount of spending required by Table 2 results in no funds available for new programs, the T&D utility shall spend over a 3-year period an amount equal to its projected incremental spending for 1999 times three.⁶ We conclude that this modest increase in the amount "spent" on DSM from 1999 to 2000 and beyond is an appropriate balance of these competing interests.

B. Industrial Customer Eligibility

In our proposed rule, we eliminated the largest customers from program eligibility. We did this because we believed that there was little, if any, market failure for energy efficient equipment among very large customers. Commenters have persuaded us that such failures do exist, and that a better way of addressing the "free rider" issue is through program design.

⁶ This Rule establishes the amounts T&D utilities must spend pursuant to 35-A M.R.S.A. § 3211. We note that T&D utilities will have a continuing obligation to maintain a least-cost transmission and distribution system. In some instances, spending on conservation measures may be necessary to ensure a least-cost system. Such conservative spending would be in addition to the amounts required by this Rule.

Consequently, we have restored program eligibility to the largest customers and adjusted program funding levels accordingly.

C. Program Procurement

Our proposed rule presented a scheme whereby T&D utilities would seek contractors to provide energy conservation services through a bid process. The proposed rule required the T&D utility to consult with interested parties in designing the RFP. Through the RFP design process, the T&D utilities and parties would establish priorities for the types of programs and markets to be addressed by contractor(s). Using the RFP, the utility would then seek bidders to meet these objectives. The contract would cover three years. The proposed rule stated a preference for a single bidder to operate all programs. We envisioned that the single bidder would likely subcontract or join with other contractors in submitting a single bid.

Some commenters (e.g. NRCM, OPA) suggested that the rulemaking be terminated and that the Commission instead convene a stakeholder group to first devise a state energy conservation plan. The State Planning Office suggested that the Commission establish a program planning process, with SPO's assistance. We do not believe such a step is necessary, nor do we think the Legislature contemplated such a procedure. The Provisional Rule allows interested persons to provide input to the T&D utility at the RFP design stage. The Provisional Rule describes objectives

for programs to meet. The RFP design process will allow T&D utilities and interested persons to determine the programs and markets to be targeted for each T&D utility, given the resources available. The Provisional Rule encourages T&D utilities to collaborate with interested parties at all appropriate phases of the design and contractor selection process.

Based on the comments we received (e.g. Coastal, ITI, MCAA, NEEP, OPA, SESCO, S&S), we have eliminated the proposed rule's stated preference for a single bidder. However, selecting a single bidder may still be the most effective and efficient way to administer energy conservation programs. We will allow the number of bidders selected to be determined through the bidding process (dependent on price and quality of offerings) without any predetermined preference for a single bidder.

VI. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Purpose

Section 1 states the purpose of the Provisional Rule. We received no specific comments on this section and it remains unchanged.

B. Section 2: Definitions

Section 2 contains definitions of the terms used in the Provisional Rule. We have made certain changes to the definitions based on the suggestions of commenters.

CMP suggested that the definition of "Energy Conservation Program" in Section 2(A) include consumer education programs. We intended to include education efforts in this definition, as reflected in the Program Objectives in Section 4(B). Therefore, we add to the definition efforts "to increase consumer awareness of the benefits of energy efficient behavior."

We received a number of comments on the definition of "Limited Societal Test." Meeting this test is one of the program objectives in Section 4. Bangor Hydro recommended the use of the All Ratepayers Test (ART). We do not adopt this change because ART confines that analysis to the utility and its ratepayers taken together and restricts the consideration of participant benefits that are greater than participant costs. It also does not allow inclusion of environmental benefits to the extent that they can be quantified.

SESCO recommended the use of "customer costs" rather than costs of "electricity production" since the benchmark is no longer utility costs. We disagree. Although it is true that the program is no longer directed only at utility costs, the purpose of the Limited Societal Test is to determine whether societal resources have been used in the most economic manner. The appropriate cost for electricity production, therefore, remains its marginal production cost and should not include the costs or revenues associated with fixed transmission and distribution facilities.

The proposed rule included a definition of "Small Commercial and Small Industrial Classes." We eliminate this definition in the Provisional Rule because we are no longer limiting program offerings to these classes, as requested by numerous commenters.

Finally, both Bangor Hydro and CMP suggested that the rule include a definition of "Market Transformation." This is one of the objectives in Section 4. We have added a definition taken from "A Scoping Study on Energy-Efficiency Market Transformation by California Utility DSM Program," J. Eto, R. Prohl. J. Schlegal (July 1996) at 10.

C. Section 3: Funding; Cost Recovery

Section 3 describes the source, level, and allocation of funding for energy conservation programs.

Section 3 assigns responsibility for funding to customers of the transmission and distribution utilities, as required in the statute. The proposed rule exempted large industrial and commercial customers from both receiving energy conservation services and paying for such services. A variety of commenters asked that large commercial and industrial customers not be excluded. This included SESCO, ITT and S&S, CLF, OPA. Counsel for IECG testified that market failures do exist for large customers; and not all large customers are sophisticated enough to capture all available cost-effective savings. Based on

the comments, we agree that all customers should be eligible for, and thus pay for, conservation. Section 3 has been revised to reflect that change.

As described above in Section V. of this Order we have revised Section 3(B) by increasing the level of funding from 1.35 mils/kWh as contained in the proposed rule to 1.436 mils/kWh. This adjustment is based on the improved data on historic and projected annual DSM spending furnished by utilities in response to the proposed rule and the inclusion of large customer program spending.

Bangor Hydro asked whether the language in proposed Section 3(B) allowing the Commission to adjust the funding level upon a finding of disproportional or unacceptable rate impacts means that funding levels can be adjusted both up or down. Upon further reflection, we have eliminated this provision altogether because adjustments, either up or down, will not be practical during the initial 3-year period. T&D utilities will be contractually bound to certain levels of conservation and expense. We will examine the funding levels for subsequent 3-year periods through appropriate proceedings in which parties will have an opportunity to seek adjustments, either up or down, in funding levels.

As in the proposed rule, we require a consistent contribution across the State as a more equitable way to carry

out the purpose of the statute rather than the uneven contribution that currently takes place. This level of transmission and distribution company spending is likely to maintain DSM spending levels at approximately historic levels.

The 3-year funding level constitutes the total funding obligation of the transmission and distribution utility, including costs from existing DSM activity. This approach will result in a ramp-in period, when only a portion of the funding level will be spent on incremental conservation program activity. The extent to which full funding will not apply to incremental programs will depend on the costs from currently existing DSM payments obligations in March 2000 or beyond. To assure that incremental DSM program activity is not eliminated from certain service territories due to prior commitments, we require such T&D utilities to spend an amount at least equal to their incremental spending for energy conservation in 1999 until such time as the program funding levels are revisited. This approach maintains, to the greatest extent possible, consistent statewide funding for conservation programs before and after the advent of retail competition in March, 2000. Our understanding of each utility's current DSM spending levels and projections leads us to conclude that a reasonable level of conservation program activity will occur during the transition period when recovery for existing DSM costs remains in transmission and distribution utility rates.

We recognize that this provision may change transmission and distribution utilities' revenue requirements associated with conservation program costs in the short term; the level of change will depend on the costs from currently existing DSM activity that will be in rates in March 2000 or beyond. However, in the long term, the provision creates a stable annual revenue requirement which, once in rates, will result in rate stability with respect to conservation program costs.

Section 3(B) establishes 3-year funding. This is intended to make programs financially attractive to potential energy service bidders, allow flexibility to develop effective long-range programs, and eliminate the cost of an annual bidding process. Most commenters agreed that multiple year funding was appropriate. CLF suggested 5 years instead of 3 years. Since we are just beginning this process, 3 years is an appropriate initial time period. Depending on how well the process works, this time period could be extended in the future.

Section 3(C) allows T&D utilities to recover the reasonable costs of programs implemented under this Chapter in appropriate ratemaking proceedings. Bangor Hydro asked for more objective standards for cost recovery and questioned whether costs could be deferred, reconciled, or recovered through a "fuel clause" type mechanism. We recognize that because the rule requires Commission approval of both the RFP and ultimate

contract, the prudence of entering into a contract will likely be determined at the time of such approval and not subject to reexamination at a later date. However, the T&D utility will have a continuing obligation to reasonably monitor and supervise contract implementation.

As to ratemaking mechanisms, the Commission is currently examining the rates of all electric utilities prior to March 2000. We expect amounts reflecting the terms of this Rule will be included in newly set rates for these utilities' T&D utility operations. We do not anticipate deferrals or reconciliation mechanisms. At the end of three years, if we change the required spending amounts, T&D utilities can seek recovery using traditional ratemaking methods or, if the utility is operating under an alternative rate plan, pursuant to that plan.

D. Section 4: Energy Conservation Program Goals and Objectives

Sections 4(A) and 4(B) state the overarching goals and specific policy objectives of energy conservation programs offered pursuant to the statute.

As explained in the Notice of Rulemaking, we expect transmission and distribution utilities, when designing their RFPs, to consider a broad range of conservation measures designed to improve energy efficiency. Section 4(B) describes the

specific program objectives that should be met by energy conservation programs. No program must meet all objectives. Rather, we favor a portfolio of programs, each of which meets some of the policy objectives. A successful portfolio should accomplish all of the objectives in varying degrees.

The policy objectives fall into three categories: implementation mechanisms (market transformation, research, education); customers who benefit (low-income, equitable distribution); and a cost-effectiveness guideline (societal test). Finally, the goals include an environmental objective. Programs that reduce air pollutants, in particular NO_x, SO_x, and CO₂, or that improve water quality in the State, will be viewed as beneficial additions to the portfolio.

We have made the following changes to the objectives based on the comments we received. In Section 4(A), Bangor Hydro objected to the use of the word "permanent" and pointed out the transitory nature of many building and equipment modifications. We agree and adopt Bangor Hydro's suggested language here.

In Section 4(B)(1), CMP and Bangor Hydro asked for clarification of transforming markets. We adopt CMP's suggested language. We also added a definition of market transformation in Section 2, Definitions. We change Section 4(B)(3) to require an opportunity for all customer classes to participate in energy conservation programs.

In Section 4(B)(4), Bangor Hydro asked for a narrow interpretation of what is meant by an objective to "target low-income customers." We believe the language provided in 5(A) regarding spending levels devoted to the low-income customer provides adequate definition of what is meant in this objective.

Proposed Section 4(B)(5) included a definition of small businesses. Because we have changed section 4(B)(3) to require that all customer classes have an opportunity to participate in conservation programs, a definition of small business is no longer needed. Therefore, we eliminate it from the Provisional Rule.

In proposed Section 4(B)(6), CMP asked how a utility program could "enhance building codes and standards." We believe this is a legitimate concern. In the past, CMP has worked with builders and architects to increase their awareness of the State's energy code. This type of activity is important but we agree that it is more properly included in the objective in Provisional Rule 4(B)(5), regarding customer awareness and education. We have, therefore, eliminated it as a separate objective in the Provisional Rule.

In proposed Section 4(B)(8) ("improve environmental quality"), Bangor Hydro requested that we clarify that all environmental effects of energy conservation programs be

included. As pointed out by Bangor Hydro, the environmental effects of premature product disposal, along with those associated with the manufacturing of efficient products, should be balanced against the environmental benefits of reduced electricity use. This was our intent in the proposed rule, and we have added the word "net" to clarify our original intent. This section is now 4(B)(6).

E. Section 5: Program Markets

Section 5 provides guidelines for an equitable distribution of program funding among customers. In particular, low-income customers, with the least discretionary income of all classes, are unlikely to be targeted for conservation activities by the market. The Provisional Rule in Section 5(A), therefore, requires at least one-third of all spending for new programs (as distinguished from spending to meet prior obligations) go to benefit low-income customers. The Public Advocate pointed out the inequity in the proposed rule of requiring only residential customers to pay for low-income conservation programs. We agree, and have changed the language accordingly.

Bangor Hydro and Dirigo objected to directing such a large proportion of the total program dollars towards a single customer segment and stated that such a requirement may be contrary to the objective of providing all customers a reasonable opportunity to participate in energy conservation. The comments of MCAA, however, described the additional benefit resulting from

improved bill payment behavior and reduced collection and bad debt expenses. On balance, we believe directing a portion of the funding to this underserved segment is appropriate. Therefore, the 33% directive remains in the Provisional Rule.

We have changed proposed Section 5(A) to reflect the commenters' suggestions that all customer classes be eligible for conservation programs. In addition, in response to the concerns of Bangor Hydro and Dirigo regarding the restrictiveness of the requirement that 90% of the revenues raised from a class be directed towards that same class, we have reduced this to 50% of the revenues remaining after funding low-income programs.

F. Section 6: Implementation

Section 6 outlines the process transmission and distribution utilities will follow when soliciting and choosing a contractor(s) to implement energy conservation programs. Section 6 also describes reporting requirements. We adopt the same approach described in the proposed rule, with certain clarifications.

The overall approach in the Provisional Rule is to allow all interested parties an opportunity for early input into the content of the RFP. The Provisional Rule allows interested parties to participate in the process of developing the RFP; the transmission and distribution utilities will then issue the RFP, select the contractor(s), and monitor implementation.

The Provisional Rule requires each transmission and distribution utility to file its proposed RFP with the Commission before it issues the RFP. The RFP should be sufficiently concrete so that the choice of a winning bidder will be straightforward and free of controversy. Furthermore, the RFP should specify that the winning contractor(s) must propose the means to monitor program success with sufficient detail so that the transmission and distribution utility can oversee contractor activity with minimal effort.

Some commenters suggested that a statewide board oversee conservation program policy or implementation. However, the statute places responsibility for implementation of the conservation programs with the transmission and distribution utilities. The Provisional Rule's approach accommodates the commenters' recommendations as well as the language of the statute.

Section 6(A) requires bids to cover a 3-year period. This will allow sufficient flexibility to accomplish goals that may require more than one year to realize, and to provide sufficient financial incentive to encourage a healthy bidding pool. Most commenters supported a similar time frame.

We have removed the proposed rule's Section 6(B) that stated a preference for a single bidder to manage a T&D utility's

entire energy conservation portfolio. We clarify in the Provisional Rule that the T&D utility must design the RFP with the input of interested parties.

Section 6(C) of the Provisional Rule describes the process for the Commission and T&D utility to obtain the input of interested persons. It allows for a period of collaboration for T&D utilities and interested persons to design an RFP. We eliminate the requirement that T&D utilities file proposed RFPs 30 days after the Rule is finally adopted. Instead, the Commission will establish a process for each T&D utility to submit its RFP following adoption of the Rule.

Section 6(D) encourages transmission and distribution utilities to collaborate in program implementation. This should lower the statewide cost of carrying out the terms of the statute and may also encourage a higher level of bidding activity. It might be especially appropriate for investor-owned utilities to combine programs with adjacent Consumer-owned Utilities.

Section 6(E) specifies that the Commission must approve the RFP before it is issued by the transmission and distribution utility. The Commission will not judge individual RFP specifications but will ensure that the intent of this rule and of the RFP developers is carried out.

Section 6(F) charges the transmission and distribution utility with responsibility for choosing the winning bid(s) and allows the Commission to intervene if necessary. However, as stated earlier, we favor an RFP that leaves the selection process straightforward and non-controversial, as well as one that encourages, to the extent feasible, the involvement of interested persons in the contractor selection process.

Section 6(G) provides for annual reporting of energy conservation program status. The purpose of this reporting is to allow the Commission and interested persons to monitor program effectiveness, as well as compliance with the statute, during the early period of retail competition.

Section 7: Waiver or Exemption

Section 7 of the Provisional Rule, includes the Commission's standard provisions permitting a waiver of this Chapter's provisions.

Accordingly, we

O R D E R

1. That the attached Chapter 380, Energy Conservation Program by Electric Transmission and Distribution Utilities is hereby provisionally adopted;
2. That the Administrative Director shall submit that provisionally adopted rule and related materials to the Legislature for review and authorization for final adoption;
3. That the Administrative Director shall file the provisionally adopted rule and related materials with the Secretary of State; and

4. That the Administrative Director shall send copies of this Order and attached rule to:
- A. All electric utilities in the State;
 - B. All persons who have filed with the Commission within the past year a written request for notices of rulemakings;
 - C. All persons on the Commission's list of persons who wish to receive notice all electric restructuring proceedings;
 - D. All persons on the service list in Docket No. 97-591; and
 - E. The Executive Director of the Legislative Council, (20 copies).

Dated at Augusta, Maine this 6th day of January, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond